

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Patricia T. Patterson,) C/A No. 0:10-00025-MBS-BM
vs.)
Plaintiff,)
James R. Barber, III.;)
George Funderburk;)
Susan Barden;) Report and Recommendation
David Huffstertler,)
Defendants.)

The Plaintiff, Patricia T. Patterson (Plaintiff), proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983.¹ The complaint names a state court judge, James R. Barber, III., and three employees of the South Carolina Workers' Compensation Commission as Defendants. Plaintiff seeks disbarment of Defendant Barber, as well as injunctive relief. The complaint should be dismissed for failure to state a claim upon which relief may be granted.

Pro Se and In Forma Pauperis Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* complaint herein pursuant to the procedural provisions of 28 U.S.C. § 1915; and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992); *Neitzke v. Williams*, 490

¹ Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the District Court.

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U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951 (4th Cir. 1995) (*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983).

As the Plaintiff is a *pro se* litigant, her pleadings are accorded liberal construction. *Erickson v. Pardus*, 551 U.S. 89 (2007); *Hughes v. Rowe*, 449 U.S. 5 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976). Even under this less stringent standard, however, the *pro se* complaint is still subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F. 2d 387 (4th Cir. 1990).

Background

Plaintiff alleges that Defendant Barber violated Plaintiff's equal protection and due process rights by repeatedly denying Plaintiff's applications to proceed *in forma pauperis* in a state court action. Plaintiff claims Defendant Barber abused his discretion and breached his duties by "denying entitled IFP Affidavits." (Complaint, page 4). Plaintiff "requests Equitable and Declaratory Relief with Absolute Judicial Immunity for Abuse of Discretion in violation of the 1st, 5th, and 14th Amendment." Plaintiff also asks for a "Permanent Public Disbarment" of Defendant Barber. (Complaint, page 5).

Defendants George Funderburk, Susan Barden, and David Huffstertler are listed as Defendants in the "Parties" section of Plaintiff's complaint. (Complaint, pages 2-3). Plaintiff identifies these individuals as employees of the South Carolina Workers' Compensation

Commission, but provides no factual allegations against these Defendants in the body of the complaint.²

Discussion

The complaint is filed pursuant to 42 U.S.C. § 1983, which “is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994), quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979). A legal action under § 1983 allows “a party who has been deprived of a federal right under the color of state law to seek relief.” *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

As an initial matter, Plaintiff has named one Defendant, Judge James R. Barber, III., who is immune from suit under § 1983. The Supreme Court of South Carolina, the Court of Appeals of South Carolina, Courts of General Sessions, Courts of Common Pleas, Family Courts, Probate Courts, Magistrate's Courts, and Municipal Courts are in a unified judicial system. See S.C. CONST. art. V, § 1; *City of Pickens v. Schmitz*, 376 S.E.2d 271 (S.C. 1989); *Cort Industries Corp. v. Swirl, Inc.*, 213 S.E.2d 445 (S.C. 1975). As South Carolina Circuit Court Judges are part of the

² Numerous other individuals, connected to a Workers’ Compensation action filed by the Plaintiff in state court, are mentioned in the body of the complaint. Plaintiff failed to list these individuals as defendants in the caption or parties section of the complaint, and failed to provide any service documents for them. Therefore, these individuals have not been added to the Court’s docket as defendants in this action.

State of South Carolina's unified judicial system, they have absolute immunity from a claim for damages arising out of their judicial actions. *See Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-364 (1978); *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987); *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985)(“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions”). *See also Siegert v. Gilley*, 500 U.S. 226, 231 (1991)(immunity presents a threshold question which should be resolved before discovery is even allowed); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)(absolute immunity “is an immunity from suit rather than a mere defense to liability”). Plaintiff’s claim against Defendant Barber results from his performance of a judicial function, the denial of Plaintiff’s applications to proceed *in forma pauperis*. As such, Defendant Barber is entitled to absolute immunity from any claim for damages the Plaintiff may assert.

In addition to immunity from monetary damages, the South Carolina Circuit Court Judges are also protected from claims for injunctive relief. Section 309(c) of the Federal Courts Improvement Act of 1996 (FICA), Pub. L. No 104-317, 110 Stat. 3847 (1996), amended § 1983 to bar injunctive relief against a judicial officer “for an act or omission taken in such officer’s judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983. As Plaintiff does not allege that either of these prerequisites for injunctive relief were met, her claim for injunctive relief against the Defendant Barber is also subject to dismissal.

Further, the complaint in this case makes no factual allegations against the three remaining Defendants, George Funderburk, Susan Barden, and David Huffstertler. In fact, Plaintiff does not even mention these Defendants in the body of the complaint. The complaint’s general complaints, regarding violation of Plaintiff’s due process and equal protection rights, absent some factual

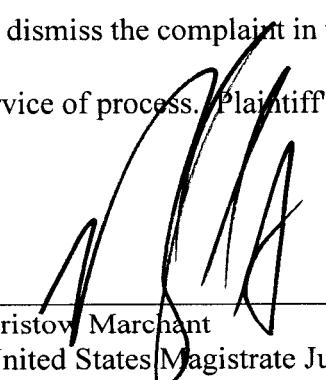
allegations against the named Defendants, are insufficient to state a claim under § 1983. A Plaintiff must affirmatively show that a defendant acted personally in the deprivation of his or her constitutional rights. *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977). When a complaint contains no personal allegations against a defendant, that defendant is properly dismissed. See *Karafiat v. O'Mally*, No. 02-3992, 2002 WL 31845135, at **1 (6th Cir. Dec. 17, 2002); *Whaley v. Hatcher*, No. 1:08CV125-01-MU, 2008 WL 1806124, at *1 (W.D.N.C. Apr. 18, 2008).

Although the Court must liberally construe the *pro se* complaint, Plaintiff must do more than make mere conclusory statements to state a claim. *Brown v. Zavaras*, 63 F.3d 967 (10th Cir. 1995); *Adams v. Rice*, 40 F.3d 72 (4th Cir. 1994); *White v. White*, 886 F.2d 721, 723 (4th Cir. 1989) (complaint dismissed because “failed to contain any factual allegations tending to support his bare assertion”). While Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the complaint, he must allege facts that support a claim for relief, *Bass v. Dupont*, 324 F.3d 761, 765 (4th Cir. 2003). As Plaintiff fails to provide any factual allegations against Defendants Funderburk, Barden, and Huffstertler, they are entitled to summary dismissal from this action.

Recommendation

Accordingly, it is recommended that the District Court dismiss the complaint in the above-captioned case *without prejudice* and without issuance and service of process. Plaintiff's attention is directed to the important notice on the next page.

January, 15 2010
Charleston, South Carolina


Bristow Merchant
United States Magistrate Judge

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).